

**APPENDIX A**  
**OPINION BELOW**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 15,350

July 8, 1957

WILLIAM B. CAMMARANO and LOUISE CAMMARANO, His Wife,  
*Appellants,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the  
Western District of Washington, Southern Division.

Before: ORE, POPE, and FEE, Circuit Judges

ORE, Circuit Judge:

Appellants, partners in a wholesale beer distributing concern in Tacoma, Washington, made a contribution to the Washington Beer Wholesalers Association, Inc., Trust Fund. The Trust Fund had been established December 17, 1947, to carry on an extensive state-wide publicity program, directed by an Industry Advisory Committee, on behalf of wholesale and retail beer and wine dealers to defeat proposed initiative legislation in the State of Washington. The measure, if enacted into law, would have placed the retail sale of wine and beer exclusively in state owned and operated stores.<sup>1</sup>

<sup>1</sup> The ballot title of the Initiative provided:

"An Act prohibiting the retail sale of beer and wine by any person other than the State of Washington, repealing all pro-

The Association assessed its members amounts based upon their volume of business. The funds received from the contributions, appellants' contribution included, were used in an effort to defeat the initiative legislation.

On their income tax returns appellants claimed a deduction for the contribution made as an ordinary and necessary business expense within the meaning of § 23(a)(1)(A), Internal Revenue Code of 1939.<sup>2</sup> The Commissioner of Internal Revenue disallowed this deduction on the ground that the contribution was used for lobbying purposes and the promotion or defeat of legislation, and therefore within the prohibition contained in Treasury Regulations 111, § 29.23 (o)-1, in force and effect at the time the payment was made. Following payment of the assessed deficiency and a claim for refund, this suit for refund followed.

The regulation reads:

Sec. 29.23(o)-1. *Contributions or Gifts by Individuals.*—

Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses, are not deductible from gross income.

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visions of existing law pertaining to licensing of retail sale of beer and wine, revoking existing licenses and providing penalties.”

## <sup>2</sup>Sec. 23. DEDUCTIONS FROM GROSS INCOME

In computing net income there shall be allowed as deductions:

(a) Expenses.—

(1) Trade or Business Expenses.—

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, • • • •

The field encompassing the force and effect of the lobbying regulation set out above has often been plowed; but there exists no straight furrow which leads unerringly to the proper solution of all cases. The regulation has quite often been held to preclude deductions made for moneys spent to defeat legislation.<sup>3</sup> Of course, the particular facts of each case govern.

Unquestionably the regulation is broad enough to exclude deductions for any and all sums spent for lobbying and the promotion or defeat of legislation, and the Government insists that the courts have sustained the validity of the regulation in that broad sense. The case of *Textile Mills Corp. v. Commissioner*, 1941, 314 U.S. 326, is relied on by the Government.<sup>4</sup> It is argued by appellants, with some force, that *Textile Mills*, as an authority, should be restricted to the facts of that particular case, and that the ban against deductions of amounts spent for lobbying as ordinary and necessary expenses is valid only where they arise "from that family of contracts to which the law has given no sanction." 314 U.S. at 339. However, other language in *Textile Mills* characterizes the words "ordinary and neces-

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<sup>3</sup> See *Textile Mills Corp. v. Commissioner*, 1941, 314 U.S. 326; *Sunset Scavenger Co. v. Commissioner*, 9 Cir., 1936, 84 F.2d 453; *Revere Racing Assn. v. Scanlon*, 1st Cir., 1956, 232 F.2d 816; *American Hardware & Eq. Co. v. Commissioner*, 4 Cir., 1953, 202 F.2d 126, cert. denied 346 U.S. 814 (1953); *Roberts Dairy v. Commissioner*, 8 Cir., 1952, 195 F.2d 948, cert. denied, 344 U.S. 865 (1952).

<sup>4</sup> In *Textile Mills*, the Supreme Court held that the expenses of lobbying and propaganda, paid by a corporation employed by certain German textile interests to secure legislation from Congress authorizing the recovery of German properties seized during the First World War, were not deductible. The Court there related the lobbying regulation to ordinary and necessary business expenses, and rejected the contention that the limitation was not applicable to such expenses because it was included as a regulation under § 23(n), Internal Revenue Code of 1939, but was not specifically included as a regulation under § 23(a) of the Act.

sary" as used in the statute, as not being "so clear and unambiguous in their meaning and application as to leave no room for an interpretative regulation." 314 U.S. at 338. We think it may reasonably be gathered from a reading of *Textile Mills* that the Commissioner, in segregating sums paid for lobbying as non-deductible as ordinary and necessary business expenses, acted within the proper exercise of his rule-making power.

This court in the case of *Sunset Scavenger Co. v. Commissioner*, 9 Cir., 1936, 84 F.2d 455, decided prior to *Textile Mills*, held that an association of scavengers in San Francisco could not deduct expenses incurred in combatting an ordinance which would have seriously affected their business. In its decision this court relied on the doctrine of statutory re-enactment in the face of a known administrative interpretation to sustain the lobbying regulation, as well as the latent ambiguity of the phrase, "ordinary and necessary business expenses."

In *American Hardware v. Commissioner*, 4 Cir., 1953, 202 F.2d 126, cert. denied, 346 U.S. 814 (1953), the regulation was applied to disallow deductions for payments by a hardware company to the National Tax Equality Association, which issued propaganda on the subject of tax revision. The court there held that *Textile Mills* controlled, rejecting contentions that *Textile Mills* was limited to the non-deductibility of items which are against public policy or are morally wrong, and that the lobbying regulation was inapplicable to ordinary business expenses since not specifically appended to § 23(a).

In *Revere Racing Association v. Scanlon*, 1 Cir., 1956, 232 F.2d 816, the regulation was again applied to disallow payments by a dog racing company for the defeat of a public referendum on the question of whether pari-mutuel system of betting at dog races would be continued in the county. There, the court rejected the contention that the regulation was inapplicable where the measure was before the people upon referendum, rather than before a legislature.

Appellants cite *Commissioner v. Heininger*, 1943, 320 U.S. 467, and *Lilly v. Commissioner*, 1952, 343 U.S. 90, both decided subsequent to *Textile Mills*, as limiting the scope of *Textile Mills* to payments violating public policy.

In *Commissioner v. Heininger*, a mail order dentist was allowed a deduction as ordinary and necessary business expenses for legal fees incurred in an unsuccessful contest of a fraud charge lodged by the Postmaster. In *Lilly v. Commissioner*, an optician was allowed business expense deductions for kick-backs to a prescribing physician, where the practice was customary.

Those cases are distinguishable in that the regulation here involved was not applicable; there was no lobbying involved. In *Lilly v. Commissioner*, the Supreme Court expressly distinguishes *Textile Mills* on the ground that in the earlier case an interpretative regulation had been in effect for many years with Congressional acquiescence. 343 U.S. at 95.

This court in *Sunset Scavenger v. Commissioner*, 9 Cir., 1936, 84 F.2d 453, held that the doctrine of statutory reenactment in the face of a known administrative interpretation applied in that case. We think that doctrine can be said to apply with equal force in the instant case.<sup>5</sup> What

<sup>5</sup> The lobbying regulation assumed its present form in Article 562 of Treasury Regulations 45 (1919 ed.), promulgated under the Revenue Act of 1918, and has since appeared without change, in all successive Regulations. See Article 562 of Treasury Regulations 45 (1920 ed.), 62, 65 and 69, promulgated under the Revenue Acts of 1918, 1921, 1924, and 1926, Article 262 of Treasury Regulations 74 and 77 (1929 and 1937 eds.), promulgated under the Revenue Acts of 1928 and 1932, Article 23(o)-2 of Treasury Regulations 86, promulgated under the Revenue Act of 1934, Article 23(q)-1 of Treasury Regulations 94, promulgated under the Revenue Act of 1936, Article 23(o)-1 of Treasury Regulations 101, promulgated under the Revenue Act of 1938, Sections 19.23(o)-1, 29.23(o)-1, and 39.23(o)-1 of Treasury Regulations 103, 111, and 118, respectively, promulgated under the Internal Revenue Code of 1939, and Section 1.162-15 of the proposed Income Tax Regulations under the Internal Revenue Code of 1954.

we have said sustains an affirmance of the judgment, but there is also another reason which also requires an affirmance. The trial court found that:

"9. There was testimony to the effect that the Initiative, if passed, would have affected the wholesale business of Cammarano Brothers. However, the way in which the measure, aimed as it was at retail sales of wine and beer, would have affected the wholesale distribution of beer was not made clear. In any event, the measure was defeated."

This is a finding that appellants failed to sustain the burden of establishing by a preponderance of the evidence that the passage of the initiative would have impaired its business as a beer distributor.

**Judgment Affirmed.**

(Endorsed:) Opinion. Filed July 8, 1957.

**PAUL P. O'BRIEN, Clerk.**

**APPENDIX B**

**JUDGMENT BELOW**

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

• No. 15,350.

**WILLIAM B. CAMMARANO and LOUISE CAMMARANO, His Wife,**  
*Appellants,*

**v.**

**UNITED STATES OF AMERICA, Appellee.**

**Judgment**

Appeal from the United States District Court for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(ENDORSED) Judgment

Filed and entered: July 8, 1957

PAUL P. O'BRIEN, *Clerk.*

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**APPENDIX C**

**ORDER DENYING REHEARING**

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Tuesday, October 15, 1957

Before: ORR, POPE and FEE, *Circuit Judges*

**Order Denying Petition for Rehearing and Petition for  
Rehearing En Banc**

On consideration thereof, and by direction of the Court,  
It Is ORDERED that the petition of Appellants, filed August  
27, 1957, and within time allowed therefor by rule of Court  
and valid extension thereof, for a rehearing and rehearing  
en banc, be, and each of them hereby is denied.

## APPENDIX D

## STATUTE, REGULATION, AND STATE CONSTITUTIONAL PROVISIONS INVOLVED

1. Section 23(a)(1)(A) of the Internal Revenue Code of 1939 provides in pertinent part as follows:

**"§ 23. Deductions from gross income.** In computing net income there shall be allowed as deductions:

**"(a) Expenses.**

**"(1) Trade or Business Expenses.**

**"(A) In General.** All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, \* \* \*."

2. Section 29.23(o)-1 of Treasury Regulations 111, as it existed during 1948, was as follows:

**"Sec. 29-23(o)-1. Contributions or gifts by individuals.—**

**"A deduction is allowable under section 23(o) only with respect to contributions or gifts which are actually paid during the taxable year, regardless of when pledged and regardless of the method of accounting employed by the taxpayer in keeping his books and records. A deduction is not allowable, however, for the actual payment of a contribution or gift if the amount of such payment already has been deducted on the accrual basis in computing net income for any taxable year beginning before January 1, 1938. A contribution or gift to an organization described in section 23(o) is deductible even though some portion of the funds of such organization is or may be in foreign countries for charitable and educational purposes. This section does not apply to contributions or gifts by estates and trusts (see section 162). For computation of deductions for charitable contributions where the taxpayer also has an allowable deduction for medical expenses, see section 29.23(x)-1.**

"A contribution or gift to the United States; any State, Territory, or any political subdivision thereof, or the District of Columbia, or any possession of the United States ~~exclusively~~ for public purposes, is deductible.

"No reduction is allowed in computing the net income of a common trust fund or a partnership for contributions or gifts made to organizations described in section 23(o). (See sections 169 and 183.) However, a partner's proportionate share of contributions or gifts actually paid by a partnership during its taxable year to such organizations may be allowed as a deduction in his individual personal return for his taxable year with or within which the taxable year of the partnership ends, to an amount which, when added to the amount of contributions made by the partner individually and claimed as a deduction, is not in excess of 15 percent of his adjusted gross income or, for taxable years beginning prior to January 1, 1944, 15 percent of his net income computed without the benefit of the deduction for contributions. In the case of a nonresident alien individual or a citizen of the United States entitled to the benefits of section 251, see sections 213(c) and 251. For contributions or gifts by corporations, see section 29.23(q)-1.

"In the case of husband and wife making a joint return, the deduction for contributions or gifts is the aggregate of such contributions or gifts made by the spouses, and is limited to 15 percent of the aggregate adjusted gross income of the spouses or, for taxable years beginning prior to January 1, 1944, 15 percent of the aggregate net income of the spouses computed without the benefit of the deductions for contributions.

"A donation made by an individual to an organization other than one referred to in section 23(o) which bears a direct relationship to his business and is made with a reasonable expectation of a financial return commensurate with the amount of the donation may constitute an allowable deduction as business expense.

"Sums of money expended for lobbying purposes, the promotion or defeat of legislation, the exploitation of propaganda, including advertising other than trade advertising, and contributions for campaign expenses, are not deductible from gross income.

"If the contribution or gift is other than money, the basis for calculation of the amount thereof shall be the fair market value of the property at the time of the contribution or gift.

"In connection with claims for deductions under section 23(o), there shall be stated in returns of income the name and address of each organization to which a contribution or gift was made and the amount and the approximate date of the actual payment of the contribution or gift in each case. Claims for deductions under section 23(o) must be substantiated, when required by the Commissioner, by a statement from the organization to which the contribution or gift was made showing whether the organization is a domestic organization, the name and address of the contributor or donor, the amount of the contribution or gift and the date of the actual payment thereof, and by such other information as the Commissioner may deem necessary."

3. Amendment 7 to the Constitution of the State of Washington, adopted in November 1912, provides in pertinent part as follows:

"Art. 2 § 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the State of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.

"(a) Initiative: The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters

shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measure shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case, the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law."